401 Water Quality Certification

South Carolina Department of Health and Environmental Control

Authority and Implementing Regulations

- Section 401 of the Federal Clean Water Act requires that applicants for federal permits for activities that will result in a discharge to waters of the US obtain a 401 Water Quality Certification
- SC Regulation 61-101 – Water Quality Certification

Water Quality Standards and 401 Water Quality Certification

- evaluate proposed projects in waters of the state -including wetlands- to make certain they will not contravene State water quality standards and/or eliminate existing or classified uses (SC R.61-68)

What activities do we regulate with the 401 Water Quality Certification?

- the discharge of dredged or fill material into waters of the United States – the Corps of Engineers has determined that this includes mechanized land clearing

How are Wetlands/Waters Regulated?

- No specific State program
- Dependent upon Federal program (must interact directly with the Federal Program)
- Two prerequisite state certifications (401 & CZC) or a 401 Cert and a Critical Area Permit (CAP)

401 Required for … Hydroelectric Facility Permits

- Administered by the Federal Energy Regulatory Commission (FERC)
- Input from US Fish and Wildlife Service, National Marine Fisheries Service, SC Dept. of Natural Resources
- 401 certification by DHEC

401 Required for ...
US Coast Guard Permits

- Administered by the US Coast Guard
- Input from US Fish and Wildlife Service, National Marine Fisheries Service, SC Dept. of Natural Resources and State Historic Preservation Office
- 401 certification by DHEC

401 Required for … Section 404 of the Clean Water Act

- Administered by the Corps of Engineers
- Oversight and guidelines by USEPA
- Input from US Fish and Wildlife Service, National Marine Fisheries Service, SC Dept. of Natural Resources and State Historic Preservation Office
- 401 and CZM certifications by DHEC

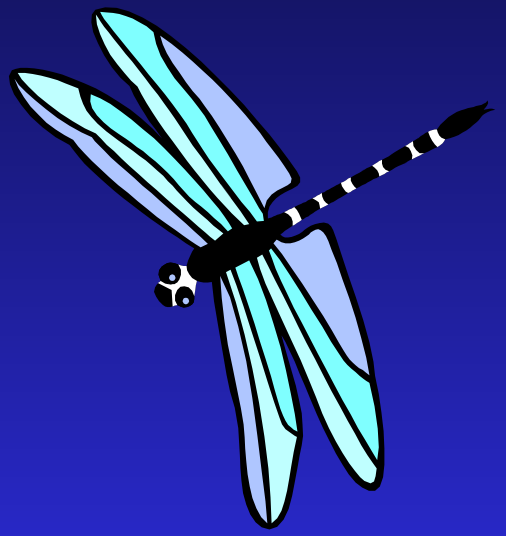
Permits and Certifications

- Corps of Engineers Permit
  - Individual
  - Nationwide
- Sec. 401 Water Quality Certification
- Coastal Zone Consistency Certification
- Critical Area Permit (CAP)

Permit Can Not Be Issued if Either Certification or CAP is Denied!

SC's Protection Tools

- SC Pollution Control Act
- Water Quality Standards
- Coastal Zone Programs
- Strong Federal presence
- Team approach



SC Pollution Control Act

- Waters of the state broadly defined
- Upheld in State Circuit Court - 1995

SC Definition of Waters

"lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers,streams, creeks, estuaries, marshes inlets, canals, the Atlantic Ocean within the territorial limits of the State and all other bodies of surface or underground water, natural or artificial, public or private inland or coastal, fresh or salt, which are wholly or partially within or bordering the State or within its jurisdiction."

Wetland Classifications and Standards

- wetlands are considered waters of the State
- no specific classifications or standards for wetlands
- classifications and standards are taken from the adjacent (tributary to) waters
  - “where surface waters are not classified by name the use classification and numeric standards of the class of stream to which they are tributary shall apply” (SC R. 61-68)

Clean Water Act Goals

- Fishable/swimmable waters
- No discharge of toxics in toxic amounts
- No discharge of pollutants

DHEC Goals

- Protect surface and ground water quality
  - Appropriate and protective standards
- Reduce and Eliminate Pollution
  - Reduce nonpoint source pollution
  - Reduce point source discharges
  - Implement antidegradation

South Carolina Water Quality Standards

- Applies to surface and ground waters
- All waters are classified
- Tributaries included

Elements of Water Quality Standards

- Beneficial uses
  - Protect aquatic life
  - Protect swimmers
- Criteria to protect those uses
  - Numeric
  - Narrative
- Antidegradation policy

Antidegradation Policy
Three Levels of Protection

- Protect existing uses and quality
- Protect high quality waters
- Protect national outstanding resource waters

Antidegradation

- applicants must demonstrate that proposed projects will maintain the water quality necessary to protect the existing uses
- Examples of antidegradation questions:
  - Will the proposed project contribute to further degradation of 303(d) listed waterbodies?
  - Will the proposed project cause the closure of shellfish harvesting areas?

303(d) List

- What is it ??
  - Section 303(d) of the Federal Clean Water Act
  - Requires states to submit list of sites not meeting state water quality standards to EPA every two years
  - “303(d) list” of impaired waters
  - Includes chronic impairments identified through routine monitoring

Section 303(d) Federal Clean Water Act (1972)

- Requires **states** to develop a TMDL for each pollutant causing impairment
- If states don't develop list or TMDLs, **EPA** must

What is a **TMDL** ?

Total Maximum Daily Load

- Maximum amount of a pollutant that a waterbody can receive from all sources, and still meet water quality standards
- Maximum allowable amounts of **point** and **nonpoint** source contributions, plus a **margin of safety**

401 Certification Procedures

- No separate application to DHEC
- Joint public notice process (15 days)
- Joint P/N serves as application to DHEC
- Opportunity for a Public Hearing
- Preparation of a Staff Assessment
- Issue Notice of Proposed Decision
- Issue/Deny Final Certification

Interagency Team

- US Army Corps of Engineers
- US Environmental Protection Agency
- US Fish & Wildlife Service
- National Marine Fisheries Service
- SC Department of Health & Environmental Control
- SC Department of Natural Resources
- SC Department of Archives & History

Water Quality Certification Program - Section 401

Process is coordinated and allows for public input

- Joint public notice with Corps and OCRM
- Public hearings when requested by 20
- Notice of proposed decision subject to appeal
- Final issued if not appealed

Water Quality Certification Program - Section 401

Program specific regulations have considerations for wetlands alterations

- Requires avoidance and minimization
- Requires alternatives analysis
- Requires mitigation

Water Quality Certification Program - Section 401

- whether the proposed activity is water dependent and the intended purpose of the activity
- whether there are feasible alternatives to the proposed activity
- all potential water quality impacts of the project
  - impact on existing and classified uses
  - physical, chemical, and biological impacts
  - the effect on circulation patterns and water movement
  - cumulative impacts

Enforcement

- EPA for unauthorized discharges
- Corps for violations of permitted activities
- CZM conditions enforced by OCRM
- 401 certification conditions are enforced by the Corps as part of permit